

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

JOSEPH LEWIS,

Case No. 18-CV-1473 (DSD/ECW)

Plaintiff,

v.

REPORT AND RECOMMENDATION

STATE OF MINNESOTA,

Defendant.

Plaintiff Joseph Lewis, a prisoner, did not pay the filing fee for this matter, but instead applied for *in forma pauperis* (“IFP”) status. *See* ECF No. 2. Because Lewis is a prisoner, he was required to pay an initial partial filing fee at the outset of this case, notwithstanding his IFP application. *See* 28 U.S.C. § 1915(b). Lewis’s IFP application, however, did not include enough financial information from which to calculate his initial partial filing fee. Lewis was ordered to provide the required financial information and, when the deadline established by the Court for doing so passed, it was recommended that this matter be dismissed without prejudice for failure to prosecute. *See* ECF No. 4.

Not long after that recommendation was entered, Lewis submitted the required financial information. Accordingly, the recommendation of dismissal was not adopted, and on September 10, 2018, Lewis was ordered to pay within 20 days an initial partial filing fee of \$52.10, failing which it would again be recommended that this case be dismissed without prejudice for failure to prosecute. *See* ECF No. 7 (citing Fed. R. Civ. P. 41(b)).

That deadline has now long since passed, and Lewis has not yet paid the required initial partial filing fee. Accordingly, this Court now again recommends, in accordance with its prior order, that this action be dismissed without prejudice under Rule 41(b) for failure to prosecute. *See Henderson v. Renaissance Grand Hotel*, 267 F. App'x 496, 497 (8th Cir. 2008) (per curiam) (“A district court has discretion to dismiss an action under Rule 41(b) for a plaintiff’s failure to prosecute, or to comply with the Federal Rules of Civil Procedure or any court order.”).

RECOMMENDATION

Based upon the foregoing, and on all of the files, records, and proceedings herein, IT IS HEREBY RECOMMENDED that this action be DISMISSED WITHOUT PREJUDICE under Fed. R. Civ. P. 41(b) for failure to prosecute.

Dated: October 15, 2018

s/Elizabeth Cowan Wright

Elizabeth Cowan Wright
United States Magistrate Judge

NOTICE

Filing Objections: This Report and Recommendation is not an order or judgment of the District Court and is therefore not appealable directly to the Eighth Circuit Court of Appeals.

Under Local Rule 72.2(b)(1), “a party may file and serve specific written objections to a magistrate judge’s proposed finding and recommendations within 14 days after being served a copy” of the Report and Recommendation. A party may respond to those objections within 14 days after being served a copy of the objections. *See Local Rule 72.2(b)(2)*. All objections and responses must comply with the word or line limits set forth in Local Rule 72.2(c).